



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------|------------------|
| 10/715,185 | 11/17/2003 | Michele J. Alberg | N95.12-0016 | 3335 |
| 164 | 7590 | 07/06/2006 | EXAMINER | |
| KINNEY & LANGE, P.A. THE KINNEY & LANGE BUILDING 312 SOUTH THIRD STREET MINNEAPOLIS, MN 55415-1002 | | | NICOLAS, FREDERICK C | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3754 | |

DATE MAILED: 07/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/715,185

Applicant(s)

ALBERG, MICHELE J.

Examiner

Frederick C. Nicolas

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 32-38 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-20 is/are allowed.
- 6) ☒ Claim(s) 1-6, 21, 22, 39 and 40 is/are rejected.
- 7) ☒ Claim(s) 23-31 is/are objected to.
- 8) ☒ Claim(s) 1-40 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/17/2003.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, claims 1-31, 39-40 in the reply filed on 4/12/2006 is acknowledged. The traversal is on the ground(s) that inventions I and II are so related that a search and examination of the entire application may be made without serious burden to the Examiner. This is not found persuasive because the two Group of claimed inventions are clearly not related in terms of their modes of operation. For example, in the elected Group I, the invention is drawn to a container for holding and dispensing a liquid. On the other hand, in the non-elected Group II, the invention is drawn to a method of forming a container. Clearly, there exist unrelated features among the two Groups of claimed inventions, which will require a separate search area for each group and thus, impose a burden in search and examination for the Examiner.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 39-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 4/12/2006.

3. Newly submitted amended claims 32-38 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the newly amended claims are distinct because they are drawn to a method of forming a container.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 32-38 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2,4-6,21-22,39-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Peterson 4,350,272.

Peterson discloses a container (1) for holding and dispensing liquid, which comprises a container mouth (4), a container body (3) extending from the container mouth, comprising: a rigid portion dimensionally defining the container (col. 5, ll. 4-12), a liner portion (9) disposed within the container adjacent to the rigid portion, and an adhesive layer (12) disposed between the rigid portion and the liner portion, wherein the adhesive layer removably secures the liner portion to the rigid portion such that the liner portion is capable of being separated from the rigid portion and collapsed within the container (col. 5, ll. 56-68), a gas inlet (8) extending through the rigid portion to a point between the rigid portion and the liner portion for allowing gas to enter between the rigid portion and the liner portion, wherein the rigid portion comprises at least one barrier

layer for reducing permeation of moisture, please note that it is inherent that Peterson's rigid container is capable of reducing permeation of moisture, light and gas.

The device shown by Peterson will perform the method recited in claims 39-40 during normal operational use of the device.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson 4,350,272.

Peterson has taught all the features of the claimed invention except that the rigid portion, the adhesive portion and the liner portion are formed together.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have formed the rigid portion, the adhesive portion and the liner portion of Peterson together, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

Further, with respect to the claimed limitation that the rigid portion, the adhesive portion and the liner portion are formed together through a blow-molding process.

Applicant should note the process of forming (blow-molding process) the device/package is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

Allowable Subject Matter

8. Claims 7-20 are allowed.
9. Claims 23-31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Aleck 3,592,360, Sossong 3,945,539, Richter et al. 5,344,045 and 6,670,007 disclose other types of container for holding and dispensing liquid.
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Art Unit: 3754


Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

FN

June 26, 2006



Frederick C. Nicolas
Primary Examiner
Art Unit 3754